



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 31, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 26, 2017 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf, as did the Landlord. Both parties provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package was served on the Landlord by registered mail. Although the Tenant was unable to provide a date for service, the Landlord acknowledged receipt.

The Landlord submitted documentary evidence in response to the Application. He testified it was served on the Tenant, in person. Although the Landlord was unable to provide a date for service, the Tenant acknowledged receipt.

Although the Tenant indicated he was waiting for police records to submit into evidence, no further issues were raised with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on February 1, 2012. Currently, rent in the amount of \$1,200.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$600.00, which the Landlord holds.

The Tenant sought an order cancelling the One Month Notice, which was issued by the Landlord on the following bases: Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, or has put the Landlord's property at significant risk; Tenant or a person permitted on the property by the Tenant has, or is likely to, damage the Landlord's property, or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Landlord provided evidence in support of the One Month Notice, which he testified was served on the Tenant by leaving a copy at the door of the Tenant's rental property on July 26, 2017. First, the Landlord testified that the Tenant was granted permission to use a clearly defined part of the property to cut and sell firewood. However, more wood than anticipated was delivered to the property than anticipated. The Landlord asked the Tenant to remove it.

In reply, the Tenant acknowledged more firewood was delivered to the property than was anticipated. However, he testified that it was removed when the Landlord asked him to do so.

Second, the Landlord testified the Tenant had garbage bags full of drywall on the property. The Landlord indicated he was concerned the drywall was an asbestos risk, and that paint cans also deposited on the property may have presented a health or environmental risk. Photographic evidence of debris on the rental property was submitted in support.

In reply, the Tenant acknowledged there were bags of drywall and empty paint cans on the property as alleged. However, testing confirmed there was no asbestos present in the drywall. The paint cans, he stated, did not contain any hazardous material. In any event, the Tenant confirmed the bags and the cans were removed the day after being asked to do so by the Landlord.

Third, the Landlord testified the Tenant brought a saw mill onto the property. Out of concern for the neighbours, and because of zoning restrictions, the Landlord testified that he told the Tenant to remove it.

In reply, the Tenant acknowledged he was going to use the mill to cut wood but not to mill lumber. In any event, the Tenant testified he removed the mill from the rental property when he was asked to do so by the Landlord.

Fourth, the Landlord testified that an inspection of the property revealed mold on the walls. Photographic images were submitted in support. He suggested the mold was likely caused because the Tenant did not use sufficient heat in that part of the house. In addition, the Landlord testified that the presence of rodent feces on and near the hot water heater supports his allegation the Tenant did not use sufficient heat.

In reply, the Tenant testified that what the Landlord submitted was mold was actually mold stains caused a number of years ago. The Tenant testified that he addressed the mold but confirmed that the stains remain. The Tenant testified that flooding had been an issue in the property. The Landlord acknowledged a previous problem with flooding but testified that a culvert installed 5-6 years ago addressed the issue. However, the Landlord also testified the Tenant was advised at the beginning of the tenancy that he should keep the culvert clear or flooding could recur. The Tenant also testified that rodents have been an ongoing issue in the area, but that their presence was not caused by the Tenant.

Fifth, the Landlord testified the Tenant installed a ½-ton chain pull in the garage, which was suspended from the ceiling attached to a floor joist. The Landlord testified this placed to property as risk because floor joists are not strong enough to support that kind of weight.

In reply, the Tenant acknowledged that he installed the chain pull, but that it was not used to lift heavy items. He testified he works in the construction industry and is aware this would not be an appropriate use. In any event, the Tenant testified it was removed when the Landlord asked him to do so.

Sixth, the Landlord testified the Tenant did not have dogs when he moved into the rental property, but that he has since acquired two dogs. The Landlord acknowledged the tenancy agreement does not address pets.

In reply, the Tenant testified the Landlord was aware the Tenant had one dog, but conceded a second dog now lives at the rental property.

Finally, the Landlord testified that the Tenant approached him in a parking lot and behaved in a threatening manner.

In reply, the Tenant stated he approached the Landlord to advise of the result of asbestos testing, referred to above. He also suggested the Landlord responds to him in a volatile manner and has harassed him.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the Landlord issued the One Month Notice on the bases listed above.

After careful consideration of the evidence tendered by the parties, I find there is insufficient evidence before me to uphold the One Month Notice. It was not disputed that a number of the Landlord's concerns – the firewood, saw mill, bags of drywall, and chain pull – were removed from the property by the Tenant very soon after begin asked to do so by the Landlord.

With respect to the mold and rodent feces in the property, I find there is insufficient evidence before me to conclude these were caused by the Tenant. The Tenant specifically denied the Landlord's assertion he did not use adequate heat in the rental property. Rather, I find it is just as likely that the mold and rodent issues occurred due to water ingress and other issues that were beyond the control of the Tenant.

With respect to the Landlord's allegation that the Tenant has engaged in illegal activity, indicated on the One Month Notice, I find there is insufficient evidence before me of illegal activity on the part of the Tenant to justify ending the tenancy.

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment, at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 23, 2017

Residential Tenancy Branch